

**HC**Districtclerk.comSANTAMARIA, ANDRES vs. ALLSTATE TEXAS  
LLOYD'S INC

12/20/2016

Cause: 201661468 CDI: 7 Court: 080

**APPEALS**

No Appeals found.

**COST STATMENTS**

No Cost Statments found.

**TRANSFERS**

No Transfers found.

**POST TRIAL WRITS**

No Post Trial Writs found.

**ABSTRACTS**

No Abstracts found.

**NOTICES**

No Notices found.

**SUMMARY****CASE DETAILS**

<b>File Date</b>	9/13/2016
<b>Case (Cause) Location</b>	Civil Intake 1st Floor
<b>Case (Cause) Status</b>	Ready Docket
<b>Case (Cause) Type</b>	Insurance
<b>Next/Last Setting Date</b>	7/10/2017
<b>Jury Fee Paid Date</b>	12/19/2016

**COURT DETAILS**

<b>Court</b>	080 <sup>th</sup>
<b>Address</b>	201 CAROLINE (Floor: 9) HOUSTON, TX 77002 Phone:7133686100
<b>JudgeName</b>	LARRY WEIMAN
<b>Court Type</b>	Civil

**ACTIVE PARTIES**

Name	Type	Post Jdgm	Attorney
SANTAMARIA, ANDRES  4310 YOAKUM BLVD., HOUSTON, TX 77006	PLAINTIFF - CIVIL		WILLIAMSON, JIMMY
ALLSTATE TEXAS LLOYD'S INC ALLSTATE TEXAS LLOYD'S INC BY SERVING THROUGH ITS REGISTERED AGENT 1999 BRYAN ST STE 900, DALLAS, TX 75201	DEFENDANT - CIVIL REGISTERED AGENT		SIMON, JAY S.
ALLSTATE VEHICLE AND PROPERTY INSURANCE COMPANY	DEFENDANT - CIVIL		

**INACTIVE PARTIES****EXHIBIT B**

No inactive parties found.

### JUDGMENT/EVENTS

Date	Description	Order Signed	Post Jdgm	Pgs /Page	Filing Attorney	Person Filing
12/19/2016	JURY FEE PAID (TRCP 216)			0		
12/19/2016	ANSWER ORIGINAL PETITION			0	SIMON, JAY S.	ALLSTATE TEXAS LLOYD'S INC
12/19/2016	JURY FEE PAID (TRCP 216)			0		
12/9/2016	AMENDED ORIGINAL PETITION			0	WILLIAMSON, JIMMY	SANTAMARIA, ANDRES
12/5/2016	DOCKET CONTROL/PRETRIAL ORDER SIGNED	12/5/2016		2		
12/2/2016	DESIGNATED TRIAL READY			0		
10/14/2016	ANSWER ORIGINAL PETITION			0	SIMON, JAY S.	ALLSTATE TEXAS LLOYD'S INC
9/13/2016	ORIGINAL PETITION			0	WILLIAMSON, JIMMY	SANTAMARIA, ANDRES

### SETTINGS

Date	Court Post Jdgm	Docket Type	Reason	Results	Comments	Requesting Party
7/10/2017 09:00 AM	080	Trial Setting	Trial on Merits			

### SERVICES

Type	Status	Instrument	Person	Requested	Issued	Served	Returned	Received	Tracking	Deliver To
CITATION SERVICE RETURN/EXECUTED	ORIGINAL PETITION	ALLSTATE TEXAS LLOYD'S INC BY SERVING THROUGH ITS REGISTERED AGENT	9/13/2016	9/13/2016	9/20/2016	9/22/2016		73287311		CIV AGCY-CIVILIAN SERVICE AGENCY
1999 BRYAN ST STE 900 DALLAS TX 75201										

### DOCUMENTS

Number	Document	Post Jdgm	Date	Pgs
73150941	Defendant's Original Answer		12/19/2016	2
73032820	Plaintiff's Amended Petition		12/09/2016	26
73000505	DOCKET CONTROL/PRETRIAL ORDER SIGNED		12/05/2016	2
72330519	Defendant Allstate Texas Lloyd's, Inc.'s Verified Original Answer		10/14/2016	4
72002469	Return of Service		09/22/2016	1
71871809	Plaintiff's Original Petition		09/13/2016	9
-> 71871811	Civil Process Request		09/13/2016	2
-> 71871810	Plaintiffs First Set of Interrogatories, Requests for Production and Requests for Admissions		09/13/2016	17
71929885	Civil Process Pick-Up Form		09/13/2016	1

9/13/2016 12:07:54 PM  
Chris Daniel - District Clerk Harris County  
Envelope No. 12688676  
By: Nelson Cuero  
Filed: 9/13/2016 12:07:54 PM

2016-61468 / Court: 080

Cause No. \_\_\_\_\_

ANDRES SANTAMARIA

*Plaintiff*

vs.

ALL STATE TEXAS LLOYD'S, INC.

*Defendant*

§  
§  
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§

IN DISTRICT COURT

HARRIS COUNTY, TEXAS

\_\_\_\_ JUDICIAL DISTRICT

**PLAINTIFF'S ORIGINAL PETITION**

TO THE HONORABLE JUDGE OF SAID COURT:

Andres Santamaria ("Plaintiff") files this Original Petition against Defendant Allstate Texas Lloyd's, Inc. ("Allstate") ("Defendant") and, in support of his causes of actions, would respectfully show the Court the following:

**I.**  
**THE PARTIES**

1. Plaintiff is a Texas resident who resides in Harris County, Texas.
2. Defendant Allstate is an insurance company doing business in the State of Texas which may be served through its registered agent for service of process in the State of Texas, CT Corporation System, via certified mail at 1999 Bryan St., Ste. 900, Dallas, TX 75201.

**II.**  
**DISCOVERY**

3. This case is intended to be governed by Discovery Level 3.

**III.**  
**CLAIM FOR RELIEF**

4. The damages sought are within the jurisdictional limits of this court. Plaintiff currently seeks monetary relief over \$100,000 but not more than \$200,000, including damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorney's fees. However, to the extent that Defendant refuses to cooperate in discovery, makes frivolous and unwarranted objections, files needless motions, quashes depositions and discovery requests without a reasonable basis, asserts unjustified or false affirmative defenses, makes unwarranted special exceptions, hires individuals they claim to be "experts" who give false opinions or testimony, produces witnesses who commit perjury, conducts excessive discovery, or otherwise needlessly delays litigation, the costs, expenses, interest, and attorney's fees will likely be over \$200,000 but not more than \$1,000,000.

**IV.**  
**JURISDICTION AND VENUE**

5. This court has subject matter jurisdiction of this cause of action because it involves an amount in controversy in excess of the minimum jurisdictional limits of this Court. No diversity of citizenship exists in this matter.

6. This Court has jurisdiction over Defendant Allstate because Defendant committed a tort in Texas and because this Defendant engages in the business of insurance in Texas.

7. Venue is proper in Harris County under Tex. Civ. Prac. & Rem. Code §15.002(a)(1) because all or a substantial part of the events or omissions giving rise to the claim occurred in Harris County. In particular, the loss at issue occurred in Harris County.

**V.**  
**FACTUAL BACKGROUND**

8. Plaintiff owned certain real property with improvements and personal property located at 10110 Kielder Pointe Drive, Spring, Texas 77379 (the "Property").

9. Plaintiff is a named insured under a property insurance policy #829 061 967 (the

“Policy”) issued by Defendant Allstate.

10. On or about April 19, 2015, a storm hit the Spring, Texas area, damaging Plaintiff's Property. Plaintiff subsequently filed a claim on his insurance policy (the “Claim”).

11. Defendant improperly denied and/or underpaid the claim.

12. Defendant assigned its adjuster on the claim.

13. On September 28, 2015, the adjuster conducted a substandard investigation and inspection of the property, prepared a report that failed to include all of the damages that he noted during the inspection, and undervalued the damages he observed during the inspection.

14. The adjuster's unreasonable investigation led to the underpayment of Plaintiff's claim.

15. Moreover, Defendant and its adjuster performed an outcome-oriented investigation of Plaintiff's claim, which resulted in a biased, unfair and inequitable evaluation of Plaintiff's losses on the property.

16. Subsequently, Plaintiff was forced to hire a Public Adjuster.

17. Plaintiff's Public Adjuster's report showed damages to the property and damage amounts significantly over those found by Allstate's adjuster.

18. Defendant failed to comply with the Policy, the Texas Insurance Code and Texas law in handling Plaintiff's claim. Further, Defendant has refused to pay all amounts due and owing under the Policy for the claim, compelling Plaintiff to file a lawsuit.

**VI.**  
**CAUSE OF ACTIONS**

19. Each of the foregoing paragraphs is incorporated by reference in the following:

**A. Breach of Contract**

20. Defendant Allstate had a contract of insurance (i.e. Policy) with Plaintiff. Defendant Allstate breached the terms of that contract by wrongfully denying and/or underpaying the claim and Plaintiff was damaged thereby.

21. The Policy is a valid, binding and enforceable contract between Plaintiff and Defendant Allstate. Defendant Allstate breached the contract by refusing to perform its obligations under the terms of the Policy and pursuant to Texas law. Defendant Allstate breach proximately caused Plaintiff's injuries and damages. These damages are all a result of Defendant's failure to pay what was owed. All conditions precedent required under the Policy have been performed, excused, waived or otherwise satisfied by Plaintiff.

**B. Prompt Payment of Claims Statute**

22. The failure of Defendant Allstate to pay for the losses and/or to follow the statutory time guidelines for accepting or denying coverage constitutes a violation of Article 542.051 et seq. of the Texas Insurance Code.

23. Plaintiff, therefore, in addition to Plaintiff's claim for damages, is entitled to 18% interest and attorneys' fees as set forth in Article 542.060 of the Texas Insurance Code.

**C. Bad Faith and Unfair Settlement Practices**

24. Defendant is required to comply with Chapter 541 of the Texas Insurance Code.

25. Defendant violated § 541.051 of the Texas Insurance Code by:

(a) making statements misrepresenting the terms and/or benefits of the policy.

26. Defendant violated § 541.060 by

a) misrepresenting to Plaintiff a material fact or policy provision relating to

coverage at issue;

b) failing to attempt in good faith to effectuate a prompt, fair, and equitable settlement of a claim with respect to which the insurer's liability had become reasonably clear;

c) failing to promptly provide to Plaintiff a reasonable explanation of the basis in the policy, in relation to the facts or applicable law, for the insurer's denial of a claim or offer of a compromise settlement of a claim;

d) failing within a reasonable time to affirm or deny coverage of a claim to Plaintiff or submit a reservation of rights to Plaintiff; and

e) refusing to pay the claim without conducting a reasonable investigation with respect to the claim;

27. Defendant violated § 541.061 by:

a) making an untrue statement of material fact;

b) failing to state a material fact necessary to make other statements made not misleading considering the circumstances under which the statements were made;

c) making a statement in a manner that would mislead a reasonably prudent person to a false conclusion of a material fact;

d) making a material misstatement of law; and

e) failing to disclose a matter required by law to be disclosed.

28. Each of the foregoing unfair settlement practices were completed knowingly by Defendant and were a producing cause of Plaintiff's injuries and damages. Defendant had actual knowledge of the facts yet, in spite of that knowledge, consciously made the decisions outlined above. The injuries are the actual damages outline above, as well as loss of use, loss of time, the engagement of a public adjuster, and other expenses as well as other consequential damages.

**D. Breach of the Duty of Good Faith and Fair Dealing/Bad Faith**

29. Defendant Allstate breached the common law duty of good faith and fair dealing owed to Plaintiff by denying or delaying payment on Plaintiff's claim when Defendant Allstate knew or should have known that liability was reasonably clear. Defendant Allstate's conduct proximately caused Plaintiff's injuries and damages. Defendant Allstate has withheld payment of the amounts owed above. Defendant Allstate was grossly negligent and/or intentional in its breach, thus giving rise to punitive damages. The liability of Defendant Allstate was reasonably clear, yet it failed to reasonably settle the Plaintiff's claim. This bad faith caused damages independent of the original damage caused by the occurrence. These include loss of use, public adjuster fees, loss of time, and other consequential damages.

**E. Attorneys' Fees**

30. Plaintiff engaged the undersigned attorney to prosecute this lawsuit against Defendant and agreed to pay reasonable attorneys' fees and expenses through trial and any appeal.

31. Plaintiff is entitled to reasonable and necessary attorney's fees pursuant to TEX. CIV. PRAC. & REM. CODE §§ 38.001-38.003 because he is represented by an attorney, presented the claim to Defendant, and Defendant did not tender the just amount owed before the expiration of the 30<sup>th</sup> day after the claim was presented.

32. Plaintiff further prays that he be awarded all reasonable attorneys' fees incurred in prosecuting his causes of action through trial and any appeal pursuant to Sections 541.152 and 542.060 of the Texas Insurance Code.

**VII.  
NO FEDERAL JURISDICTION**

33. There is no federal jurisdiction in this case. There is no federal question and no diversity as defendant is a Texas resident. The cause of action against the Texas resident is a valid cause of action under the Texas Insurance Code and decisions of the Texas Supreme Court. Although



other defendants have attempted to remove in similar circumstances, federal judges have repeatedly remanded the cases. The Texas Supreme Court, the Fifth Circuit, and numerous U.S. district courts<sup>1</sup> have recognized that adjusters can be liable under the Texas Insurance Code. *See Liberty Mutual Ins. Co. v. Garrison Contractor, Inc.*, 966 S.W.2d 482, 484 (Tex. 1998); *Gash v. Hartford*, 491 F.3d 278, 282 (5<sup>th</sup> Cir. 2007) (interpreting Texas law).

34. Removal of this case would be in blatant disregard for established case law which would entitle to their attorneys' fee for contest for removal.

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<sup>1</sup> *See, e.g., Grace Tabernacle v. State Farm* use No. 1:02-CV-331, Memorandum Opinion and Order of Remand, pp. 2-3 (E.D. Tex.) ("[w]hen confronted with the viability of an Article 21.21 [now codified as Chapter 541] claim against persons in their individual capacity, the Texas Supreme Court squarely held that 'Article 21.21 provides a cause of action against insurance company employees whose job duties call for them to engage in the business of insurance'"); *Albair v. Allstate Texas Lloyds, et al.*, Civil Action No. 1:03CV91, Memorandum and Order (E.D. Tex. April 16, 2003) (remanding the case in finding nothing in the record indicating that the plaintiffs, after a period of discovery, would not be able to establish their claims as alleged against either adjuster defendant); *Magnes v. State Farm, et al.*, Civil Action No. 1:02-CV-270 (E.D. Tex.), Report and Recommendation of the United States Magistrate Judge; *Linda Duvall v. Allstate Insurance Company, et al.*, Civil Action No. H-03-5312 (S.D. Tex.) (holding that the insurer's adjuster had "engaged in the business of insurance"); *Fern Francis-Jackson v. Liberty Mutual Fire Ins. Co.*, No. H- 10-976 at \* 8 (S.D. Tex. June 1, 2010) [citing *Ross v. Citifinancial, Inc.*, 344 F.3d 458, 462 (5<sup>th</sup> Cir. 2003)] (Judge Hittner remanded the case back to state court after concluding that "the Court does not have subject matter jurisdiction to hear this case, and it was therefore improvidently removed." *Id.* at \*9); *CD Mgmt. Corp. d/b/a US Supermarket v. Nationwide Prop. & Gas. Ins. Co.*, No. H-09-1701, at \*9 (S.D. Tex. July 28, 2009) (Judge Lee Rosenthal held that independent adjusters can be held liable under Texas Insurance Code § 541.060(a). Judge Rosenthal further noted that "[e]ven before *Gash* some courts held that an independent adjuster could be liable under the Texas Insurance Code." *Id.* at \*8 n. 1 (citing *McNeel v. Kemper Cas. Ins. Co.*, No. Civ. A. 3:04-CV-0734, 2004 WL 1635757, at \*2-3 (N.D. Tex. July 21, 2004)); *Kimberly Trimmer-Davis v. State Farm Lloyds of Tex. Ins. Co., et al.*, No. H-09-2260, at \*7 (S.D. Tex. Sept. 29, 2009) (Hoyt, J. held that "Texas law clearly authorizes suits against insurance adjusters in their individual capacities."); *Blanchard v. State Farm Lloyds*, 206 F. Supp.2d 840, 846-848 (S.D. Tex. 2001) ("[T]his court cannot hold that there is no reasonable possibility that Plaintiffs could establish a claim against [the adjuster] in state court ...."); *Tenner v. Prudential ins. Co. of Am.*, 872 F. Supp. 1571, 1574 (E.D. Tex. 1994) (holding that the insured could maintain an action under the DTPA and Texas Insurance Code against the insurance agent in her individual capacity).

**VIII.**  
**CONDITION PRECEDENT**

35. All conditions precedent to Plaintiff's right to recover have been fully performed or have been waived by the Defendant.

**IX.**  
**JURY DEMAND**

36. Plaintiff requests a jury trial.

**X.**  
**DISCOVERY REQUEST**

37. Pursuant to Rule 194, you are requested to disclose, within fifty (50) days after service of this request, the information or material described in Rule 194.2(a) – (1).

38. You are also requested to respond to the attached interrogatories, requests for production and requests for admission within fifty (50) days, in accordance with the instructions stated therein.

**XI.**  
**PRAYER**

WHEREFORE, PREMISES, CONSIDERED, Andres Santamaria prays that, upon final hearing of the case, he recover all damages from and against Defendant that may reasonably be established by a preponderance of the evidence, and that Mr. Santamaria be awarded attorneys' fees through trial and appeal, costs of court, pre-judgment interest, post-judgment interest, and such other and further relief, general or special, at law or in equity, to which Mr. Santamaria may show himself to be justly entitled.

Respectfully submitted,

WILLIAMSON, SEARS & RUSNAK, LLP

/s/ Jimmy Williamson

Jimmy Williamson

Texas Bar No. 21624100

Jesus Chapa

Texas Bar No. 24075891

Billy Dills

Texas Bar No. 24067421

4310 Yoakum Blvd.

Houston, Texas 77006

Telephone (713) 223-3330

Facsimile (713) 223-0001

jimmy@wsrlawfirm.com

jesus@wsrlawfirm.com

billy@wsrlawfirm.com

**ATTORNEYS FOR PLAINTIFF**

CAUSE NO. 2016-61468

ANDRES SANTAMARIA	§	IN THE DISTRICT COURT OF
	§	
Plaintiff,	§	
	§	
vs.	§	HARRIS COUNTY, TEXAS
	§	
ALLSTATE TEXAS LLOYD'S, INC.,	§	
	§	
Defendants.	§	80TH JUDICIAL DISTRICT

**DEFENDANT ALLSTATE TEXAS LLOYD'S, INC.'S**  
**VERIFIED ORIGINAL ANSWER**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Allstate Texas Lloyd's, Inc. ("Defendant"), and files this, its Verified Original Answer to Plaintiff's Original Petition, and would respectfully show unto the Court the following:

**I.**  
**ORIGINAL ANSWER**

Pursuant to Rule 92 of the Texas Rules of Civil Procedure, Defendant generally denies each and every, all and singular, the allegations contained within Plaintiff's Original Petition, and demands strict proof thereon by a preponderance of the credible evidence in accordance with the Constitution and laws of the State of Texas.

**II.**  
**VERIFIED DENIAL**

Plaintiff's Original Petition refers to Allstate Texas Lloyd's, Inc. The company which issued the insurance policy-at-issue is Allstate Vehicle and Property Insurance Company.

**III.**  
**DEMAND FOR JURY TRIAL**

Defendant herein makes demand for a jury trial in this case, and will tender the applicable fees thereon.

**IV.**  
**PRAYER**

WHEREFORE, PREMISES CONSIDERED, Defendant Allstate Texas Lloyd's, Inc. prays that upon final trial and hearing hereof, Plaintiff recovers nothing from Defendant, but Defendant goes hence without delay and recover costs of court and other such further relief, both general and special, to which Defendant may be justly entitled.

Respectfully submitted,

/s/Jay Scott Simon

Jay Scott Simon

State Bar No. 24008040

[jsimon@thompsoncoe.com](mailto:jsimon@thompsoncoe.com)

THOMPSON, COE, COUSINS & IRONS, L.L.P.

One Riverway, Suite 1400

Houston, Texas 77056

Telephone: (713) 403-8216

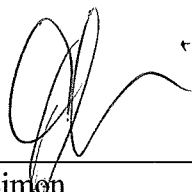
Telecopy: (713) 403-8299

**ATTORNEY FOR DEFENDANT**  
**ALLSTATE TEXAS LLOYD'S, INC.**

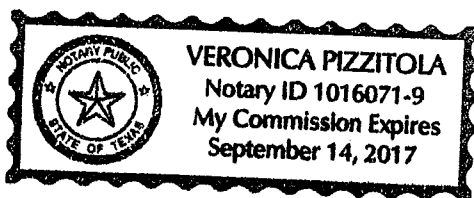
**VERIFICATION**

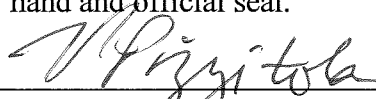
STATE OF TEXAS       §  
                                  §  
COUNTY OF HARRIS   §

BEFORE ME, the undersigned notary public, on this day personally appeared Jay Scott Simon, as counsel for Allstate Texas Lloyd's, Inc., who, being by me first duly sworn, did on his oath depose and say that he has read Defendant Allstate Texas Lloyd's, Inc.'s Verified Original Answer and that the statements contained within the Verified Denial are, based upon information and belief, true and correct.

  
\_\_\_\_\_  
Jay Scott Simon

SUBSCRIBED AND SWORN TO BEFORE ME by Jay Scott Simon on this the 14th day of October, 2016, to certify which witness my hand and official seal.



  
\_\_\_\_\_  
Notary Public, State of Texas

**CERTIFICATE OF SERVICE**

This is to certify that on October 14, 2016, a true and correct copy of the foregoing was delivered to the following counsel for Plaintiff by electronic service:

Jimmy Williamson  
Jesus Chapa  
Billy Dills  
WILLIAMSON, SEARS & RUSNAK, LLP  
4310 Yoakum Blvd.  
Houston, Texas 77006  
Email: [jimmy@wsrlawfirm.com](mailto:jimmy@wsrlawfirm.com)  
[jesus@wsrlawfirm.com](mailto:jesus@wsrlawfirm.com)  
[billy@wsrlawfirm.com](mailto:billy@wsrlawfirm.com)

/s/Jay Scott Simon  
Jay Scott Simon

**Cause No. 2016 – 61468****ANDRES SANTAMARIA***Plaintiff***vs.****ALLSTATE VEHICLE AND PROPERTY  
INSURANCE COMPANY***Defendant*§  
§  
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§  
§  
§  
§**IN DISTRICT COURT****HARRIS COUNTY, TEXAS****80TH JUDICIAL DISTRICT****PLAINTIFF'S AMENDED PETITION**

TO THE HONORABLE JUDGE OF SAID COURT:

Andres Santamaria ("Plaintiff") files this Amended Petition against Defendant Allstate Vehicle and Property Insurance Company ("Allstate") ("Defendant") and, in support of his causes of actions, would respectfully show the Court the following:

**I.  
THE PARTIES**

1. Plaintiff is a Texas resident who resides in Harris County, Texas.
2. Defendant Allstate is an insurance company doing business in the State of Texas which may be served through its attorney for service, C T Corporation System, 1999 Bryan St. Ste. 900, Dallas, Texas 75201 – 3136.

**II.  
DISCOVERY**

3. This case is intended to be governed by Discovery Level 3.



**III.**  
**CLAIM FOR RELIEF**

4. The damages sought are within the jurisdictional limits of this court. Plaintiff currently seeks monetary relief over \$100,000 but not more than \$200,000, including damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorney's fees. However, to the extent that Defendant refuses to cooperate in discovery, makes frivolous and unwarranted objections, files needless motions, quashes depositions and discovery requests without a reasonable basis, asserts unjustified or false affirmative defenses, makes unwarranted special exceptions, hires individuals they claim to be "experts" who give false opinions or testimony, produces witnesses who commit perjury, conducts excessive discovery, or otherwise needlessly delays litigation, the costs, expenses, interest, and attorney's fees will likely be over \$200,000 but not more than \$1,000,000.

**IV.**  
**JURISDICTION AND VENUE**

5. This court has subject matter jurisdiction of this cause of action because it involves an amount in controversy in excess of the minimum jurisdictional limits of this Court. No diversity of citizenship exists in this matter.

6. This Court has jurisdiction over Defendant Allstate because Defendant committed a tort in Texas and because this Defendant engages in the business of insurance in Texas.

7. Venue is proper in Harris County under Tex. Civ. Prac. & Rem. Code §15.002(a)(1) because all or a substantial part of the events or omissions giving rise to the claim occurred in Harris County. In particular, the loss at issue occurred in Harris County.

**V.**  
**FACTUAL BACKGROUND**

8. Plaintiff owned certain real property with improvements and personal property located at 10110 Kielder Pointe Drive, Spring, Texas 77379 (the "Property").

9. Plaintiff is a named insured under a property insurance policy #829 061 967 (the

“Policy”) issued by Defendant Allstate.

10. On or about April 19, 2015, a storm hit the Spring, Texas area, damaging Plaintiff’s Property. Plaintiff subsequently filed a claim on his insurance policy (the “Claim”).

11. Defendant improperly denied and/or underpaid the claim.

12. Defendant assigned its adjuster on the claim.

13. On September 28, 2015, the adjuster conducted a substandard investigation and inspection of the property, prepared a report that failed to include all of the damages that he noted during the inspection, and undervalued the damages he observed during the inspection.

14. The adjuster’s unreasonable investigation led to the underpayment of Plaintiff’s claim.

15. Moreover, Defendant and its adjuster performed an outcome-oriented investigation of Plaintiff’s claim, which resulted in a biased, unfair and inequitable evaluation of Plaintiff’s losses on the property.

16. Subsequently, Plaintiff was forced to hire a Public Adjuster.

17. Plaintiff’s Public Adjuster’s report showed damages to the property and damage amounts significantly over those found by Allstate’s adjuster.

18. Defendant failed to comply with the Policy, the Texas Insurance Code and Texas law in handling Plaintiff’s claim. Further, Defendant has refused to pay all amounts due and owing under the Policy for the claim, compelling Plaintiff to file a lawsuit.

**VI.**  
**CAUSE OF ACTIONS**

19. Each of the foregoing paragraphs is incorporated by reference in the following:

**A. Breach of Contract**

20. Defendant Allstate had a contract of insurance (i.e. Policy) with Plaintiff. Defendant Allstate breached the terms of that contract by wrongfully denying and/or underpaying the claim and Plaintiff was damaged thereby.

21. The Policy is a valid, binding and enforceable contract between Plaintiff and Defendant Allstate. Defendant Allstate breached the contract by refusing to perform its obligations under the terms of the Policy and pursuant to Texas law. Defendant Allstate breach proximately caused Plaintiff's injuries and damages. These damages are all a result of Defendant's failure to pay what was owed. All conditions precedent required under the Policy have been performed, excused, waived or otherwise satisfied by Plaintiff.

**B. Prompt Payment of Claims Statute**

22. The failure of Defendant Allstate to pay for the losses and/or to follow the statutory time guidelines for accepting or denying coverage constitutes a violation of Article 542.051 et seq. of the Texas Insurance Code.

23. Plaintiff, therefore, in addition to Plaintiff's claim for damages, is entitled to 18% interest and attorneys' fees as set forth in Article 542.060 of the Texas Insurance Code.

**C. Bad Faith and Unfair Settlement Practices**

24. Defendant is required to comply with Chapter 541 of the Texas Insurance Code.

25. Defendant violated § 541.051 of the Texas Insurance Code by:

(a) making statements misrepresenting the terms and/or benefits of the policy.

26. Defendant violated § 541.060 by

a) misrepresenting to Plaintiff a material fact or policy provision relating to

coverage at issue;

b) failing to attempt in good faith to effectuate a prompt, fair, and equitable settlement of a claim with respect to which the insurer's liability had become reasonably clear;

c) failing to promptly provide to Plaintiff a reasonable explanation of the basis in the policy, in relation to the facts or applicable law, for the insurer's denial of a claim or offer of a compromise settlement of a claim;

d) failing within a reasonable time to affirm or deny coverage of a claim to Plaintiff or submit a reservation of rights to Plaintiff; and

e) refusing to pay the claim without conducting a reasonable investigation with respect to the claim;

27. Defendant violated § 541.061 by:

a) making an untrue statement of material fact;

b) failing to state a material fact necessary to make other statements made not misleading considering the circumstances under which the statements were made;

c) making a statement in a manner that would mislead a reasonably prudent person to a false conclusion of a material fact;

d) making a material misstatement of law; and

e) failing to disclose a matter required by law to be disclosed.

28. Each of the foregoing unfair settlement practices were completed knowingly by Defendant and were a producing cause of Plaintiff's injuries and damages. Defendant had actual knowledge of the facts yet, in spite of that knowledge, consciously made the decisions outlined above. The injuries are the actual damages outline above, as well as loss of use, loss of time, the engagement of a public adjuster, and other expenses as well as other consequential damages.

**D. Breach of the Duty of Good Faith and Fair Dealing/Bad Faith**

29. Defendant Allstate breached the common law duty of good faith and fair dealing owed to Plaintiff by denying or delaying payment on Plaintiff's claim when Defendant Allstate knew or should have known that liability was reasonably clear. Defendant Allstate's conduct proximately caused Plaintiff's injuries and damages. Defendant Allstate has withheld payment of the amounts owed above. Defendant Allstate was grossly negligent and/or intentional in its breach, thus giving rise to punitive damages. The liability of Defendant Allstate was reasonably clear, yet it failed to reasonably settle the Plaintiff's claim. This bad faith caused damages independent of the original damage caused by the occurrence. These include loss of use, public adjuster fees, loss of time, and other consequential damages.

**E. Attorneys' Fees**

30. Plaintiff engaged the undersigned attorney to prosecute this lawsuit against Defendant and agreed to pay reasonable attorneys' fees and expenses through trial and any appeal.

31. Plaintiff is entitled to reasonable and necessary attorney's fees pursuant to TEX. CIV. PRAC. & REM. CODE §§ 38.001-38.003 because he is represented by an attorney, presented the claim to Defendant, and Defendant did not tender the just amount owed before the expiration of the 30<sup>th</sup> day after the claim was presented.

32. Plaintiff further prays that he be awarded all reasonable attorneys' fees incurred in prosecuting his causes of action through trial and any appeal pursuant to Sections 541.152 542.060 of the Texas Insurance Code.

**VII.**  
**NO FEDERAL JURISDICTION**

33. There is no federal jurisdiction in this case. There is no federal question and no diversity as defendant is a Texas resident. The cause of action against the Texas resident is a valid cause of action under the Texas Insurance Code and decisions of the Texas Supreme Court. Although

other defendants have attempted to remove in similar circumstances, federal judges have repeatedly remanded the cases. The Texas Supreme Court, the Fifth Circuit, and numerous U.S. district courts<sup>1</sup> have recognized that adjusters can be liable under the Texas Insurance Code. *See Liberty Mutual Ins. Co. v. Garrison Contractor, Inc.*, 966 S.W.2d 482, 484 (Tex. 1998); *Gash v. Hartford*, 491 F.3d 278, 282 (5<sup>th</sup> Cir. 2007) (interpreting Texas law).

34. Removal of this case would be in blatant disregard for established case law which would entitle to their attorneys' fee for contest for removal.

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<sup>1</sup> *See, e.g., Grace Tabernacle v. State Farm* use No. 1:02-CV-331, Memorandum Opinion and Order of Remand, pp. 2-3 (E.D. Tex.) ("[w]hen confronted with the viability of an Article 21.21 [now codified as Chapter 541] claim against persons in their individual capacity, the Texas Supreme Court squarely held that 'Article 21.21 provides a cause of action against insurance company employees whose job duties call for them to engage in the business of insurance'"); *Albair v. Allstate Texas Lloyds, et al.*, Civil Action No. 1 :03CV91, Memorandum and Order (E.D. Tex. April 16, 2003) (remanding the case in finding nothing in the record indicating that the plaintiffs, after a period of discovery, would not be able to establish their claims as alleged against either adjuster defendant); *Magnes v. State Farm, et al.*, Civil Action No. 1:02-CV-270 (E.D. Tex.), Report and Recommendation of the United States Magistrate Judge; *Linda Duvall v. Allstate Insurance Company, et al.*, Civil Action No. H-03-5312 (S.D. Tex.) (holding that the insurer's adjuster had "engaged in the business of insurance"); *Fern Francis-Jackson v. Liberty Mutual Fire Ins. Co.*, No. H- 10-976 at \* 8 (S.D. Tex. June 1, 2010) [citing *Ross v. Citifinancial, Inc.*, 344 F.3d 458, 462 (5<sup>th</sup> Cir. 2003)] (Judge Hittner remanded the case back to state court after concluding that "the Court does not have subject matter jurisdiction to hear this case, and it was therefore improvidently removed." *Id.* at \*9); *CD Mgmt. Corp. d/b/a US Supermarket v. Nationwide Prop. & Gas. Ins. Co.*, No. H-09-1701, at \*9 (S.D. Tex. July 28, 2009) (Judge Lee Rosenthal held that independent adjusters can be held liable under Texas Insurance Code § 541.060(a). Judge Rosenthal further noted that "[e]ven before *Gash* some courts held that an independent adjuster could be liable under the Texas Insurance Code." *Id.* at \*8 n. 1 (citing *McNeel v. Kemper Cas. Ins. Co.*, No. Civ. A. 3:04-CV-0734, 2004 WL 1635757, at \*2-3 (N.D. Tex. July 21, 2004)); *Kimberly Trimmer-Davis v. State Farm Lloyds of Tex. Ins. Co., et al.*, No. H-09-2260, at \*7 (S.D. Tex. Sept. 29, 2009) (Hoyt, J. held that "Texas law clearly authorizes suits against insurance adjusters in their individual capacities."); *Blanchard v. State Farm Lloyds*, 206 F. Supp.2d 840, 846-848 (S.D. Tex. 2001) ("[T]his court cannot hold that there is no reasonable possibility that Plaintiffs could establish a claim against [the adjuster] in state court .... "); *Tenner v. Prudential ins. Co. of Am.*, 872 F. Supp. 1571, 1574 (E.D. Tex. 1994) (holding that the insured could maintain an action under the DTPA and Texas Insurance Code against the insurance agent in her individual capacity).

**VIII.**  
**CONDITION PRECEDENT**

35. All conditions precedent to Plaintiff's right to recover have been fully performed or have been waived by the Defendant.

**IX.**  
**JURY DEMAND**

36. Plaintiff requests a jury trial.

**X.**  
**DISCOVERY REQUEST**

37. Pursuant to Rule 194, you are requested to disclose, within fifty (50) days after services of this request, the information or material described in Rule 194.2(a) – (1).

38. You are also requested to respond to the attached interrogatories, requests for production and requests for admission within fifty (50) days, in accordance with the instructions stated therein.

**XI.**  
**PRAYER**

WHEREFORE, PREMISES, CONSIDERED, Andres Santamaria prays that, upon final hearing of the case, he recover all damages from and against Defendant that may reasonably be established by a preponderance of the evidence, and that Mr. Santamaria be awarded attorneys' fees through trial and appeal, costs of court, pre-judgment interest, post-judgment interest, and such other and further relief, general or special, at law or in equity, to which Mr. Santamaria may show himself to be justly entitled.

Respectfully submitted,

WILLIAMSON, SEARS & RUSNAK, LLP

/s/ Jimmy Williamson

Jimmy Williamson

Texas Bar No. 21624100

Jesus Chapa

Texas Bar No. 24075891

Billy Dills

Texas Bar No. 24067421

4310 Yoakum Blvd.

Houston, Texas 77006

Telephone (713) 223-3330

Facsimile (713) 223-0001

[jimmy@wsrlawfirm.com](mailto:jimmy@wsrlawfirm.com)

[jesus@wsrlawfirm.com](mailto:jesus@wsrlawfirm.com)

[billy@wsrlawfirm.com](mailto:billy@wsrlawfirm.com)

**ATTORNEYS FOR PLAINTIFF**



CAUSE NO. 2016-61468

ANDRES SANTAMARIA	§	IN THE DISTRICT COURT OF
	§	
Plaintiff,	§	
	§	
vs.	§	HARRIS COUNTY, TEXAS
	§	
ALLSTATE VEHICLE AND PROPERTY	§	
INSURANCE COMPANY,	§	
	§	80TH JUDICIAL DISTRICT
Defendants.		

**DEFENDANT ALLSTATE VEHICLE AND PROPERTY**  
**INSURANCE COMPANY'S ORIGINAL ANSWER**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Allstate Vehicle and Property Insurance Company ("Defendant"), and files this, its Original Answer to Plaintiff's Petition, and would respectfully show unto the Court the following:

**I.**  
**ORIGINAL ANSWER**

Pursuant to Rule 92 of the Texas Rules of Civil Procedure, Defendant generally denies each and every, all and singular, the allegations contained within Plaintiff's Petition, and demands strict proof thereon by a preponderance of the credible evidence in accordance with the Constitution and laws of the State of Texas.

**II.**  
**DEMAND FOR JURY TRIAL**

Defendant herein makes demand for a jury trial in this case.

**III.**  
**PRAYER**

WHEREFORE, PREMISES CONSIDERED, Defendant Allstate Vehicle and Property Insurance Company prays that upon final trial and hearing hereof, Plaintiff recovers nothing from Defendant, but Defendant goes hence without delay and recovers costs of court and other such further relief, both general and special, to which Defendant may be justly entitled.

Respectfully submitted,

By: /s/Jay Scott Simon

Jay Scott Simon  
State Bar No. 24008040  
[jsimon@thompsoncoe.com](mailto:jsimon@thompsoncoe.com)  
THOMPSON, COE, COUSINS & IRONS, L.L.P.  
One Riverway, Suite 1400  
Houston, Texas 77056  
Telephone: (713) 403-8210  
Telecopy: (713) 403-8299

**ATTORNEY FOR DEFENDANT  
ALLSTATE VEHICLE AND PROPERTY  
INSURANCE COMPANY**

**CERTIFICATE OF SERVICE**

This is to certify that on December 19, 2016, a true and correct copy of the foregoing was delivered to the following counsel for Plaintiffs by electronic service:

Jimmy Williamson  
Jesus Chapa  
Billy Dills  
WILLIAMSON, SEARS & RUSNAK, LLP  
4310 Yoakum Blvd.  
Houston, TX 77006  
Email: [jimmy@wsrlawfirm.com](mailto:jimmy@wsrlawfirm.com)  
[jesus@wsrlawfirm.com](mailto:jesus@wsrlawfirm.com)  
[billy@wsrlawfirm.com](mailto:billy@wsrlawfirm.com)

/s/Jay Scott Simon  
Jay Scott Simon